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No. 99-1342

In the Supreme Court of the United States

GEORGE HILL, PETITIONER

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a claim for state workers' compensation benefits that is dismissed on the ground that it was untimely filed under state law tolls the statute of limitations for filing a claim for benefits under the Longshore and Harbor Workers' Compensation Act.

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OPINIONS BELOW

The judgment of the court of appeals (Pet. App. 1a-9a) is reported at 195 F.3d 790. The decision and order of the Benefits Review Board (Pet. App. 10a-30a), and the decision and order of the administrative law judge (Pet. App. 31a-76a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1999. The petition for writ of certiorari was filed on February 8, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.* Pet. App. 32a. Petitioner injured his back on October 1, 1980, while working as a sandblaster for Avondale Shipyards, Inc. (Avondale). *Id.* at 2a, 11a. After receiving disability benefits from Avondale for one week, petitioner returned to his sandblasting position. *Ibid.* In mid-November 1980, Avondale transferred petitioner to a position in which he performed crane hooking. He remained at that position until he was laid off in March 1983. *Id.* at 2a-3a, 11a. In August 1983, petitioner was diagnosed as having two bulging discs. He underwent corrective surgery to alleviate that condition in late 1983 and again in 1995. *Id.* at 3a, 11a-12a.

On February 21, 1984, petitioner filed a claim for benefits under the Louisiana workers' compensation statute in connection with his disc condition. The Louisiana state court denied the claim as time-barred under a state-law provision (La. Rev. Stat. Ann. § 23:1209.A (West 1998)) requiring that a claim be filed within two years of the "accident." Pet. App. 3a, 8a, 69a. Petitioner appealed, but the state appellate court affirmed. The Louisiana Supreme Court declined review on October 2, 1992, and denied reconsideration on November 6, 1992. *Id.* at 3a.

2. On June 24, 1992, petitioner filed an administrative claim for compensation under the LHWCA. Pet. App. 69a. A hearing was held before a Department of Labor Administrative Law Judge (ALJ), who issued a

decision and order on July 2, 1997, denying compensation benefits but granting medical benefits. *Id.* at 75a.[1]

The Benefits Review Board (the Board) affirmed.[2] Pet. App. 10a-30a. The Board held that, while the filing of a timely state claim for workers' compensation tolls the one-year statute of limitations for filing a claim under the LHWCA, the filing of an untimely state claim does not. *Id.* at 22a The Board acknowledged that prior decisions applying the LHWCA had indicated that the pendency of another claim tolls the statute of

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[1] The ALJ based its decision regarding compensation benefits on three findings: (1) that petitioner's time for filing a claim under the LHWCA began to run when his disc condition was first diagnosed on August 23, 1983 (Pet. App. 68a); (2) that the statute of limitations for filing an LHWCA claim was tolled by Section 13(d) of the Act (33 U.S.C. 913(d)) during the pendency of petitioner's state claim (Pet. App. 68a-69a); and (3) that petitioner waited eight and one-half months after the completion of his state case before he filed his LHWCA claim, bringing the total elapsed time for statute of limitations purposes to more than the permissible one year. *Id.* at 69a-70a.

[2] In affirming, the Board rejected much of the ALJ's reasoning. The Board held that if petitioner's state claim had been timely filed, then under Section 913(d) of the LHWCA, 33 U.S.C. 913(d), the statute of limitations would not have begun to run until the completion of petitioner's state case. Thus, it reasoned, the ALJ was incorrect to hold that six months of the LHWCA's limitations period had run before petitioner filed his state claim. Pet. App. 20a. Moreover, the Board found that petitioner had not in fact waited eight and one-half months after the completion of his state case before filing his LHWCA claim. The Louisiana Supreme Court denied review of petitioner's state-law claim on October 2, 1992 (three and one-half months after petitioner filed his LHWCA claim), not, as the ALJ had thought, on October 2, 1991. *Id.* at 19a. Thus, because the Board rejected the ALJ's reasoning, it is the Board's decision—and the court of appeals' affirmance of it—that is at issue here.

limitations under the LHWCA, *id.* at 20a-22a (citing *Ingalls Shipbuilding Div., Litton Sys., Inc.* v. *Hollinhead*, 571 F.2d 272 (5th Cir. 1978) (per curiam), and *Calloway* v. *Zigler Shipyards, Inc.*, 16 Ben. Rev. Bd. Serv. (MB) 175 (1984)), but it distinguished those cases as not addressing state claims that are untimely under state law. *Id.* at 22a. The Board further noted that in this case, twelve years had elapsed between the date of the accident and the date on which petitioner filed his LHWCA claim. *Id.* at 23a. Reasoning that Avondale would be substantially disadvantaged by having to defend against a "stale claim," the Board agreed with the ALJ that it would be "illogical to allow an untimely filed state claim to toll the time for filing a claim under the Act." *Id.* at 23a-24a. "To hold otherwise," the Board concluded, "would not only defeat the purpose for establishing statutes of limitations but would reward [petitioner] for filing two delinquent claims." *Id.* at 24a.

3. The court of appeals affirmed. Pet. App. 1a-9a. Like the Board, the court of appeals distinguished this case from its prior decision in *Hollinhead*. The court explained that the issue in *Hollinhead* was not whether an untimely state claim triggers the tolling provision, but whether a state workers' compensation claim is a suit "at law or in admiralty to recover damages" within the meaning of Section 13(d) of the LHWCA, 33 U.S.C. 913(d). Pet. App. 5a. Similarly, the court distinguished the Board's decision in *Calloway*, which likewise involved a timely predicate suit under the Jones Act *Id.* at 5a-6a. In contrast to those cases, the court reasoned that "[t]o allow [petitioner's] untimely LHWCA claim to piggy-back on a prior stale claim would be an abuse of § 913(d)'s tolling provision and would subvert the purpose of statutes of limitation[s] * * * to provide

fairness to defendants and to afford plaintiffs a reasonable period of time within which to present their claims." *Id.* at 6a (citation omitted). And the court agreed with the Board that to allow petitioner's LHWCA claim to proceed when he initiated it so many years after the date of his injury would put Avondale at a "substantial disadvantage," given that "Avondale merely had to concern itself with the prescription issue in state court, rather than the merits of Hill's claim." *Id.* at 6a-7a. The court therefore held that "an untimely state law claim cannot toll the statute of limitations for filing a LHWCA claim." *Id.* at 7a.[3]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. Section 13(a) of the LHWCA, 33 U.S.C. 913(a), provides that a claim for compensation benefits under the LHWCA must be filed within one year of the injury or the date of the last payment that the employer makes without an award. The one-year time limitation does not begin to run, however, until the claimant becomes aware, or should have become aware, "of the

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[3] The court also denied petitioner's request for modification of the attorneys' fees and costs, which the ALJ, in a supplemental decision and order, had awarded based on petitioner's success in obtaining medical benefits. Pet. App. 7a-8a, 24a. Petitioner sought review of the ALJ's substantial reduction in the number of hours he had claimed as compensable under the Act's fee provision. *Id.* at 7a. Noting that the ALJ reduced the amount of attorneys' fees primarily because petitioner was not successful in his main claim for compensation benefits, the court affirmed the award of fees as within the discretionary authority of the ALJ. *Id.* at 7a- 8a. Petitioner has not raised that issue before this Court.

relationship between the injury or death and the employment." *Ibid.*; see *Marathon Oil Co.* v. *Lunsford*, 733 F.2d 1139, 1141 (5th Cir. 1984) (date of awareness is when claimant "know[s] (or should know) the true nature of his condition"). Section 13(d), 33 U.S.C. 913(d), sets forth a tolling provision:

> Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination of such suit.

That provision does not apply here.

By its terms, Section 13(d)'s tolling provision applies where two requirements are met: (1) a claimant brings suit at law or in admiralty to recover damages for injury or death; and (2) recovery in that suit is denied because the parties were covered under the Longshore Act and the employer was insured under it. The first requirement is met where, as here, a claimant brings a state workers' compensation claim. 20 C.F.R. 702.222(b); see also *Hollinhead*, 571 F.2d at 273-274. But the second requirement clearly is not met in this case. The state court dismissed petitioner's state claim not because it concluded that the LHWCA provides the only available remedy,[4] but because petitioner's claim

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[4] Louisiana law contains a provision directing dismissal of cases fitting that description (see La. Rev. Stat. Ann. § 23:1035.2 (West 1998)), but the state court did not apply that provision to this case.

was untimely under state law. See Pet. App. 3a. Thus, Section 13(d) does not apply here, and the one-year limitations period set out in Section 13(a) was not tolled by the filing of petitioner's untimely state claim. Because petitioner's LHWCA claim was filed over eight years after petitioner's back condition was first diagnosed, the court of appeals correctly affirmed the denial of that claim as untimely.[5]

2. Petitioner contends (Pet. 6) that the court of appeals "violated Mr. Hill's due process and constitutional rights by fundamentally changing the law." He asserts first that the Fifth Circuit's decision in *Hollinhead* and the Board's decision in *Calloway* held that the filing of a state workers' compensation claim tolls the federal limitations period during the pendency of that claim without regard to the reason it is ultimately dismissed. He then argues that in departing from the holdings of those cases, the court of appeals "profoundly altered the law * * * and thereby severely prejudiced [petitioner]." *Ibid.* Petitioner further argues (Pet. 6-7) that because he filed his state claim within the federal one-year filing period set forth in Section 13(a), the court of appeals in effect held that "if the applicable state workers' compensation scheme provides a shorter time limitation for filing a claim than the LHWCA does, then the shorter period controls the LHWCA statute of limitations." That interpretation, petitioner asserts,

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[5] The court's discussion of the staleness of petitioner's claim and the unfairness to Avondale of permitting the LHWCA claim to proceed was unnecessary to its decision. We agree with petitioner (Pet. 8) that the record does not support a finding that Avondale would have been prejudiced by the delay had petitioner's LHWCA claim been allowed to proceed. But because that claim was untimely, the court's discussion of that point has no bearing on the correctness of the decision below.

will lead to inconsistent results depending upon the state in which the shipyard is located, and will sometimes, as in this case, result in the denial of benefits to a worker with an otherwise meritorious claim. Pet. 7. Petitioner's argument is unavailing.

Petitioner's reliance on *Hollinhead* and *Calloway* is misplaced. As the court of appeals in this case explained (Pet. App.-5a), the precise issue in *Hollinhead* was whether the filing of a state workers' compensation claim constitutes a claim for damages "at law or in admiralty," within the meaning of Section 13(d). See *Hollinhead*, 571 F.2d at 274. The Fifth Circuit in that case did not address Section 13(d)'s "grounds of dismissal" limitation at all. *Hollinhead* did, however, state that under Section 13(d), "the filing of a claim under the Mississippi Workmen's Compensation Act tolls" the LHWCA's one-year limitations period. *Id.* at 272. Seizing on that broad language, the Board in *Calloway* relied on *Hollinhead* for the proposition that the mere filing of a claim for damages tolls the statute of limitations, without regard to the grounds on which that claim is later dismissed. 16 Ben. Rev. Bd. Serv. at 177. That part of *Calloway*, however, was mere dicta: *Calloway* did not involve an untimely state claim, but rather a claim under the Jones Act (46 U.S.C. 688) that was dismissed because the claimant was not a statutory "seaman" and was therefore covered only under the LHWCA. See 16 Ben. Rev. Bd. Serv. at 176.[6] Moreover, the Board in *Calloway* simply ignored the text of Section 13(d), which expressly limits its tolling pro-

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[6] Cf. *Southwest Marine* v. *Gizoni*, 502 U.S. 81, 90 (1991) (in providing the tolling provision in Section 13(d), Congress anticipated that claimants would file LHWCA claims after unsuccessfully asserting "seaman" status under the Jones Act).

vision to situations in which the alternative claim was denied because the parties are covered and insured under the LHWCA. Petitioner cites no case supporting the proposition that he had a constitutional right to rely on the Board's inadequately reasoned dicta in *Calloway*, which had little basis in *Hollinhead* and simply ignored the plain language of Section 13(d).

Finally, far from making the appropriate limitations period depend on where the claim is filed, the decision below requires the consistent dismissal of any LHWCA claim that is untimely under Section 13(a) if it was preceded by a state workers' compensation claim that was dismissed as untimely. The denial of petitioner's claim because of its untimeliness is not a harsh or incongruous result, but rather the necessary result of Congress's specific decision to toll the statute of limitations only under certain limited conditions clearly specified by statute.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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